IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6091 of 2005

For Approval and Signature:

HONOURABLE MS. JUSTICE R.M.DOSHIT

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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PATEL JAGRUTIBEN MANHARLAL - Petitioner(s)
Versus
DIRECTOR OF PRIMARY EDUCATION & 4 - Respondent(s)

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Appearance :
MR PARIMAL P PATEL for Petitioner(s) : 1,
Respondent(s) : 1 SERVED,
MS MITA PANCHAL, AGP for Respondent(s) : 2,
MR MANISH J PATEL for Respondent(s) : 3,
MEENA VYAS for Respondent(s) : 4,
MR KB PUJARA for Respondent(s) : 5,

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CORAM : HONOURABLE MS. JUSTICE R.M.DOSHIT

Date : 06/09/2006

ORAL JUDGMENT

Pursuant to the advertisement published on 14th July, 2004, the petitioner made application for appointment as Vidya Sahayak under the respondent –

District Primary Education Committee, Sabarkantha (hereinafter referred to as, **"the Committee"**). The Committee had advertised 18 posts for ATD (Art Teachers Diploma) teachers of which 9 posts were reserved for the reserved category candidates. Remaining 9 posts were available for open category candidates. The petitioner had applied in open category. She was placed on the merit list at serial No.9. The petitioner was, therefore, entitled to appointment as Vidya Sahayak.

It appears that one another candidate in open category one Varshaben Bhikhabhai Patel had also applied as ATD teacher pursuant to the aforesaid advertisement dated 14th July, 2004. Feeling aggrieved by her non-selection she approached this Court in Special Civil Application No.14750/2004. She made a grievance that her credentials as a sports person were not considered. The additional marks she was entitled as a sports person if added to the marks obtained by her, she would stand selected as ATD teacher. Pending the said petition, this Court had directed that one post of ATD teacher be kept vacant.

Consequently, of the 9 posts available for open category ATD teachers only 8 posts were filled-in. The petitioner being the ninth on the merit list was not issued the appointment order. The said petition came to be allowed by this Court (Coram: P.B.Majmudar, J.) by order dated 8th December, 2004. The learned Judge was pleased to direct the Committee to consider the sports credentials of the said Varshaben Bhikhabhai Patel and give the weightage in accordance with the Government Resolutions dated 25th February, 1980 and 1st August, 1990. Pursuant to the said direction the merit of the said Varshaben Bhikhabhai Patel was recomputed by adding the credentials as a sports person. The total marks secured by her now was 81.72, higher than 79.36 marks of the present petitioner. She was, therefore, issued appointment order ignoring the claim of the present petitioner. Feeling aggrieved, the petitioner has preferred the present petition.

It is indeed true that on adding the credentials as a sports person the said Varshaben Bhikhabhai Patel had secured higher merit than the present

petitioner. But, it turns out that the present petitioner also is a sports person. Considering her participation in sports at the national and the state level, she is entitled to an additional 3.97 marks. If the said 3.97 marks are added to her total marks of 79.36 she secures 83.33 marks which is higher than the marks of the aforesaid Varshaben Bhikhabhai Patel. It is, therefore, evident that the respondent District Primary Education Committee, Sabarkantha has erred in pushing down the petitioner in the merit list below serial No.9. The petitioner has been thus denied her rightful claim to appointment as ATD teacher under the Committee.

In above view of the matter, the petition is allowed. The respondent No.3 – District Primary Eduction Committee, Sabarkantha is directed to appoint the present petitioner as Vidya Sahayak (ATD teacher) in unreserved category forthwith. Such appointment order shall be issued not later than four weeks from today. On her appointment as Vidya Sahayak, the petitioner will be entitled to seniority in accordance with her placement in the merit list.

In the event, the Committee fails to issue appointment order as directed hereinabove, commencing from 1st November, 2006 the petitioner will be entitled to receive salary as Vidya Sahayak.

Rule is made absolute in the above terms. The parties shall bear their own cost.

(Ms. R.M.Doshit, J.)

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